

A BILL

To amend the Marine Mammal Protection Act of 1972, as amended, to authorize the Act for a period of five [5] years, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That

SEC. 1. SHORT TITLE.

This Act may be cited as the “Marine Mammal Protection Act Amendments of 2002”.

SEC. 2. AMENDMENT OF MARINE MAMMAL PROTECTION ACT OF 1972.

(a) References.- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. § 1361 et seq.).

(b) Relationship to Other Laws.- Except as otherwise expressly provided, nothing in this Act is intended to amend, repeal, or otherwise affect any other provision of law.

TITLE I: AUTHORIZATION OF APPROPRIATIONS

SEC. 101. DEPARTMENT OF COMMERCE.

Section 116(a) (16 U.S.C. § 1384(a)) is amended to read as follows: “(a) Department of Commerce.—

“(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this title (other than sections 117 and 118) and title IV, \$23,728,000 for fiscal year 2003 and such sums as may be necessary for fiscal years 2004-07.

“(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 117 and 118, \$6,970,000 for fiscal year 2003 and such sums as may be necessary for fiscal years 2004-07.”.

SEC. 102. DEPARTMENT OF THE INTERIOR.

Section 116(b) (16 U.S.C. § 1384(b)) is amended to read as follows: “(b) Department of the Interior.— There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this title, such sums as may be necessary for fiscal years 2003-07.”.

SEC. 103. MARINE MAMMAL COMMISSION.

Section 207 (16 U.S.C. § 1407) is amended to read as follows: “There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this title, \$1,856,000 for fiscal year 2003 and such sums as may be necessary for fiscal years 2004-07.”.

TITLE II: NATIVE ALASKAN HARVEST MANAGEMENT AGREEMENTS

SEC. 201. MARINE MAMMAL HARVEST MANAGEMENT AGREEMENTS IN ALASKA.

A new section is inserted after section 119 to read as follows:

"Section 119A. Marine Mammal Harvest Management Agreements in Alaska.

“(a) In General.- Notwithstanding the provisions of Section 101(b), the Secretary may enter into harvest management agreements with Alaska Native Tribes or Tribally Authorized Organizations to conserve and manage non-depleted stocks of marine mammals through the regulation of subsistence use by Alaska Natives. Such agreements may also apply to depleted stocks. Agreements shall include, at a minimum, a management plan that-

“(1) identifies the signatories to, and the stock or species and areas covered by the plan;

“(2) is based on biological information and traditional ecological knowledge;

“(3) provides for a sustainable harvest and is designed to prevent populations from becoming depleted;

“(4) describes the Tribal authority and procedures to be used by the signatory Alaska Native Tribes or Tribally Authorized Organizations to promulgate and enforce regulations and ordinances that will implement any management prescriptions; and

“(5) specifies the duration of the agreement and sets forth procedures for periodic review and termination of the agreement.”

To be eligible for entry into a harvest management agreement under the provisions of this section, a Tribally Authorized Organization must show that it has the authority, through approved delegations of authority from Federally recognized Alaska Native Tribes, to adopt and enforce ordinances, regulations, or other laws that govern the taking, transporting, sale, or possession of marine mammals or marine mammal products for subsistence purposes or for

purposes of creating and selling authentic native articles of handicrafts and clothing by members of those Tribes.

“(b) Procedural Requirements.— In formulating and implementing agreements under this section, Alaska Native Tribes and Tribally Authorized Organizations shall comply with the provisions of 25 U.S.C. § 1302; except that the penalties set forth in section 105 of this Act (16 U.S.C. § 1375) shall be applicable to violations of Tribal regulations or ordinances promulgated to enforce agreements entered into under this section.

“(c) Prohibition.- It is unlawful for any person, within the geographic area to which a harvest management agreement adopted pursuant to this section applies, to take, transport, sell, or possess a marine mammal in violation of any regulation or ordinance adopted by an Alaska Native Tribe or Tribally Authorized Organization that is a signatory to the agreement for that stock or for a specific portion of the geographic range of that stock or species; provided, that any such regulation or ordinance shall be consistent with the terms of the harvest management agreement and shall not apply to any act other than the taking, transporting, sale, or possession of a marine mammal or marine mammal product for subsistence purposes or for purposes of creating and selling authentic native articles of handicrafts and clothing. For depleted stocks, any such regulation or ordinance shall be consistent with regulations adopted by the Secretary pursuant to Sections 101(b) and 103.

“(d) Grants.— Agreements entered into under this section may include grants to Alaska Native Tribes or Tribally Authorized Organizations for, among other purposes—

“(1) collecting and analyzing data on marine mammal populations;

“(2) monitoring the harvest of marine mammals for subsistence and handicraft uses;

“(3) participating in marine mammal research conducted by the Federal Government, the State of Alaska, academic institutions, or private organizations; and

“(4) developing, implementing, and enforcing marine mammal harvest management agreements and plans.

“(e) Effect of a Depletion Finding.— In the event the Secretary determines that regulation of Native harvest may be necessary in order to protect a depleted stock, the Secretary shall solicit recommendations for such regulation from Alaska Native Tribes and Tribally Authorized Organizations engaged in harvest management of the species or stock pursuant to this section. The Secretary shall provide to such Alaska Native Tribes and Tribally Authorized Organizations draft proposed regulations, an analysis of how the dual goals of being the least restrictive measures upon subsistence use and the conservation goals of the Act would be achieved, and an opportunity to comment prior to publication of any proposed regulations in the *Federal Register*.

“(f) Public Notice and Review.— The Secretary shall, prior to approval and signature of a harvest management agreement under this section, provide public notice and an opportunity for public review and comment on the draft agreement.

“(g) Authorization of Appropriations.—

“(1) There are authorized to be appropriated to the Secretary of Commerce, for the purposes of carrying out this section, \$3,000,000 for fiscal year 2003; \$3,500,000

for fiscal year 2004; \$4,000,000 for fiscal year 2005; \$4,500,000 for fiscal year 2006; and, \$5,000,000 for fiscal year 2007; and

“(2) There are authorized to be appropriated to the Secretary of the Interior, for the purposes of carrying out this section, \$3,000,000 for fiscal year 2003; \$3,500,000 for fiscal year 2004; \$4,000,000 for fiscal year 2005; \$4,500,000 for fiscal year 2006; and, \$5,000,000 for fiscal year 2007.”.

SEC. 202. CONSULTATION WITH TRIBES AND TRIBALLY AUTHORIZED ORGANIZATIONS ON DEPLETION DETERMINATIONS.

Section 3(1)(A)(16 U.S.C. § 1362(1)(A)) is amended to read as follows: “(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II of this Act and, for any stock subject to a harvest management agreement entered into under Section 119A, those Alaska Native Tribes and Tribally Authorized Organizations that are signatories to such an agreement, determines that a species or population stock is below its optimum sustainable population;”.

SEC. 203. COOPERATIVE ENFORCEMENT AUTHORITY.

Section 107(a) (16 U.S.C. § 1377(a)) is amended to read as follows: “Except as otherwise provided in this title, the Secretary shall enforce the provisions of this title. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency or of Alaska Native Tribes or Tribally Authorized Organizations for purposes of enforcing this title.”.

SEC. 204. CONFORMING AMENDMENTS.

(a) Section 101(b) (16 U.S.C. § 1371(b)) is amended by striking “section 109” and inserting “sections 109 and 119A”.

(b) Section 119 (16 U.S.C. § 1388) is amended—

(1) in subsection (a) by deleting the phrase “Alaska Native organizations” and inserting in its place the phrase “Alaska Native Tribes or Tribally Authorized Organizations”; and

(2) in subsection (b) by deleting the phrase “Alaska Native organizations” and inserting in its place the phrase “Alaska Native Tribes or Tribally Authorized Organizations”.

SEC. 205. AUTHORIZATIONS OF APPROPRIATIONS FOR COOPERATIVE AGREEMENTS UNDER SECTION 119.

Section 119 (16 U.S.C. § 1388) is amended -

(1) in subsection (d)(1) to read “\$1,500,000 to the Secretary of Commerce for each of the fiscal years 2003-07”; and

(2) in subsection (d)(2) to read “\$1,500,000 to the Secretary of the Interior for each of the fiscal years 2003-07.”;

SEC. 206. EFFECT ON SOVEREIGN AUTHORITIES; DISCLAIMER.

(a) Nothing in this title establishes, expands, diminishes, or alters, or is intended to establish, expand, diminish, or alter any sovereign authorities held by any Alaska Native village, Alaska Native Tribe, Tribally Authorized Organization, or Alaska Native organization. Any decision by the Secretary to enter into a harvest management agreement with one or more Alaska Native Tribes or Tribally Authorized Organizations is not to be construed as a determination of any claim or right of the participating Tribes or Tribally Authorized Organizations other than the authority to regulate the taking, transporting, sale, or possession of marine mammals by their members for subsistence or for clothing or handicraft purposes.

(b) Nothing in this title establishes, expands, diminishes, or alters, or is intended to establish, expand, diminish, or alter, the authority of any Alaska Native village, Alaska Native Tribe, Tribally

Authorized Organization, or Alaska Native organization to regulate, arrest, or take enforcement action against any person who is not a member of the participating Tribe or village.

SEC. 207. DEFINITION OF TRIBALLY AUTHORIZED ORGANIZATION

Section 3 (16 U.S.C. § 1362) is amended by inserting a new subsection to read as follows:

“(32) The term ‘Tribally Authorized Organization’ means an organization consisting of representatives of federally recognized Alaska Native Tribes that is authorized by the governments of such Tribes to formulate marine mammal cooperative agreements or marine mammal harvest management agreements and to adopt ordinances, regulations, or other laws to implement such harvest management agreements.”

TITLE III: CULTURAL EXCHANGE AND EXPORT

SEC. 301. EXPORT PROHIBITION.

Section 102(a)(4) (16 U.S.C. § 1372(a)(4)) is amended to read as follows: “(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product;”.

SEC. 302. PERMITS.

(a) Section 101(a)(1) is amended—

(1) by replacing the phrase “taking, and importation” with the phrase “taking, importation, or exportation”;

(2) by replacing the phrase “taking or importation”, each place it occurs, with the phrase “taking, importation, or exportation”; and

(3) by revising the final sentence to read as follows:

“If the Secretary issues such a permit for importation or exportation, such importation or exportation may be made upon presentation of the permit to the Customs Officer concerned.”;
and

(b) Section 104 (16 U.S.C. § 1374) is amended—

(1) in subsection (a) by replacing the first sentence with the following: “The Secretary may issue permits which authorize the taking, importation, exportation, or transport of any marine mammal. Permits issued under this section, except for subsections (c)(5), (c)(6), or (h), may authorize the purchase or sale of marine mammals.”; and

(2) in subsection (b) –

(A) by replacing in paragraph (2)(A) the term “animals” with the term “marine mammals” and striking the phrase “which are authorized to be taken or imported” and replacing it with the words “which are covered by the authorization”;

(B) by striking in paragraph (2)(B) the phrase “, or from which they may be imported” and inserting in its place “or to or from which they may be exported or imported.”;

(3) in subsection (c) –

(A) by amending the title to read: “Display, Research, Enhancing Survival or Recovery, Polar Bear Parts, and Photography”;

(B) by amending the first two sentences of paragraph (1) to read as follows: “Any permit issued by the Secretary for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to any taking, importation, or exportation. Any person issued a permit under this subsection shall furnish to the Secretary a report on all activities carried out pursuant to that authority.”;

(C) by striking from paragraph (2)(A) the phrase “to take or import a marine mammal”;

(D) by deleting the word “A” in paragraph (2)(B) and inserting in its place the following: “Except as limited by paragraph (9) of this subsection, a”;

(E) by inserting in the first sentence of paragraph (3)(A) the phrase “or other proposed act” after the word “taking”;

(F) by inserting in paragraph (4)(A) the phrase “the taking or other proposed act” after the words “determined that” and striking the phrase “taking or importation” from clauses (i) and (ii);

(G) by inserting in the first sentence of paragraph (5)(A) the phrase “and transport” after the word “importation”; and

(H) by striking in paragraph (8)(A) the term “taken or imported” and inserting in its place the phrase “taken, imported, or exported”;

(4) in subsection (d) –

(A) by striking in paragraph (2) the phrase “taking or importation” and inserting in its place the word “activities”; and

(B) by striking in paragraph (3) the phrase “taking or importation of any marine mammal” and inserting in its place the words “activities proposed”;

(5) in subsection (f) –

(A) by amending paragraph (1) to read as follows: “the time of the taking or other authorized act;”;

(B) by striking in paragraph (2) the phrase “such taking or importation;” and inserting in its place “the taking or other authorized act;”;

(C) by amending paragraph (3) to read as follows: “any other time the marine mammal is in the possession of such person or agent.”.

(c) Section 105(a)(1) is amended by deleting the phrase “taking or importation” in the third sentence, and replacing it with the phrase “taking, importation, or exportation”. [Note: this amendment is needed only if that proposed in section 503(a) is not adopted.]

SEC. 303. CONFORMING AMENDMENT TO SECTION 103.

Section 103 is amended by adding a new sentence to the end of subsection (a) to read as follows: “Subject to the provisions of this section, such regulations may authorize the export, transport, purchase, or sale of a marine mammal or marine mammal product.”.

TITLE IV: FISHERIES INTERACTIONS

SEC. 401. TUNA-DOLPHIN PROVISIONS.

(a) Section 101 (16 U.S.C. § 1371) is amended–

(1) in subsection (a)(2)(B)(iii) by–

(A) striking the word “limits” after the words “the total dolphin mortality”;

(B) striking the words “limits permitted for that nation’s vessels” and inserting in their place the words “attributed to that nation’s vessels do not exceed the limits established”; and

(C) striking the words “do not exceed the limits determined for 1997, or any year thereafter” and inserting in their place “for any year”.

(2) by amending subsection (a)(2)(C)(i)(II) to read as follows: "for the purposes of tracking and verifying the 'dolphin-safe' status of tuna products in accordance with regulations promulgated pursuant to subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. § 1385(f)); or"; and

(3) in subsection (a)(2)(F) by—

(A) striking, in existing clause (i), the phrase "except as provided in clause (ii)," inserting the word "large-scale" before "driftnet fishing", inserting a period after the word "driftnet" before the phrase "in the South Pacific Ocean", and deleting the remainder of the clause;

(B) striking clause (ii);

(C) striking the remainder of
subparagraph (F) and redesignating clause (i) as subparagraph
(F); and

(D) inserting at the end of subparagraph (F), as revised by this paragraph, the
following: “For the purposes of subparagraph (F), the term 'large-scale driftnet fishing'
has the meaning given such term in section 3 of the Magnuson-Stevens Fishery
Conservation and Management Act (16 U.S.C. § 1802).”.

(b) The Dolphin Protection Consumer Information Act (16 U.S.C. § 1385) is amended—

(1) by revising subsection (c)(1) to read as follows: “the term ‘large-scale driftnet’ means
a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length
of two and one-half kilometers or more; ‘driftnet fishing’ means a method of fishing in which a
large-scale driftnet is placed in the water and allowed to drift with the currents and winds for the
purpose of entangling fish in the webbing;” and

(2) in subsection (c)(2) by striking the words “160 degrees west longitude” and inserting
in their place “150 degrees west longitude”;

(c) Section 303(a)(2)(B) (16 U.S.C. § 1413(a)(2)(B)) is amended—

(1) in clause (v) by striking the word “before” and inserting in its place the word “after”;

(2) in clause (x) by inserting the phrase “or that” after the phrase “serious injury”; and

(3) in clause (xi) by striking the word “internationally” and replacing it with the word
“intentionally”.

(d) Section 307(a)(2) (16 U.S.C. § 1417(a)(2)) is amended—

(1) by striking the phrase “section 101(d)” and inserting in its place the phrase “section 101(e)”.

SEC. 402. FISHERY INTERACTION PROVISIONS.

Section 118 (16 U.S.C. § 1387) is amended—

(a) by amending subsection (c)(3)(A) to read as follows:

“(3)(A) An owner of a vessel engaged in a fishery listed under paragraph (1)(A)(i) or (ii), and the master or operator of any such vessel, shall, in order to engage lawfully in that fishery—

“(i) have registered under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section;

“(ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel;

“(iii) report as required by subsection (e);

“(iv) comply with any applicable take reduction plan and emergency regulations issued under this section; and

“(v) take on board an observer if requested to do so by the Secretary.”;

(b) by striking subparagraphs (B) and (C) of subsection (c)(3) and redesignating subparagraphs (D) and (E) as subparagraphs (B) and (C), respectively;

(c) by amending subsection (f)(1) to read as follows: “The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii), unless the Secretary determines, after notice and opportunity for public comment, that the level of fishery-related mortality and serious injury is having a negligible impact on that stock. The Secretary may develop and implement a take reduction plan for any other marine mammal stocks

which interact with a fishery listed under subsection (c)(1)(A)(i) which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.”;

(d) by amending subsection (f)(6)(A)(i) by striking the word “and” at the end of the clause;

(e) by amending subsection (f)(6)(A)(ii) by adding the word “and” at the end of the clause after the words “from such stock;”;

(f) by amending subsection (f)(6)(A) by adding a new clause (iii) as follows: “(iii) assign a technical liaison, with commercial fishing expertise, to the team to provide information to team members regarding fishing practices and gear usage during the take reduction plan development process.”; and

(g) by amending subsection (f)(7)(B) by redesignating clause (ii) as clause (iii) and adding a new clause (ii) as follows: “(ii) The Secretary shall reconvene or otherwise consult with the team to solicit comments on the proposed regulations and any proposed changes to the draft plan during the period of public review and comment.”.

SEC. 403. EXPANSION OF FISHERIES INCLUDED IN THE INCIDENTAL TAKE PROGRAM.

(a) Section 3 (16 U.S.C. § 1362) is amended—

(1) by inserting a new subsection to read as follows : “(30) The term ‘listed fishery’ means a fishery included on the list of fisheries published pursuant to section 118(c)(1).”.

(b) Section 118 (16 U.S.C. § 1387) is amended—

(1) in subsection (a)(1) by replacing the phrase “commercial fishing operations” with the phrase “engaging in a listed fishery”;

(2) in subsection (c)(1) by striking the phrase “, within 90 days after the date of enactment of this section”;

(3) in subsection (c)(1)(A) by striking the word “commercial” after the phrase “Secretary’s list of” and striking the phrase “commercial fisheries that have”;

(4) in subsection (c)(1)(A)(i) by adding the phrase “fisheries that have” before the words “frequent incidental mortality”;

(5) in subsection (c)(1)(A)(ii) by adding the phrase “fisheries that have” before the words “occasional incidental mortality”;

(6) in subsection (c)(1)(A)(iii) by adding the phrase “commercial fisheries that have” before the words “a remote likelihood”;

(7) in subsection (c)(2)(A) by deleting the word “commercial”; and

(8) in subsection (e) by striking the word “commercial” each place it occurs and striking the word “Act” and replacing it with the word “section”.

SEC. 404. CONFORMING AMENDMENTS TO THE EXPANSION OF FISHERIES INCLUDED IN THE INCIDENTAL TAKE PROGRAM.

(a) Section 101 (16 U.S.C. § 1371) is amended—

(1) in subsection (a)(2) by striking the word “commercial” after the phrase “permitted in the course of”;

(2) in subsection (a)(5)(A) by replacing the words “commercial fishing” with the phrase “engaging in a listed fishery”;

(3) in subsection (a)(5)(D)(i) by replacing the words “commercial fishing” with the phrase “engaging in a listed fishery”;

(4) in subsection (a)(5)(E)(i) by replacing the phrase “commercial fishing operations” with the phrase “a listed fishery”;

(5) in subsection (a)(5)(E)(i)(I) by replacing the word “commercial” with the word “such”; and

(6) in subsection (a)(5)(E)(iii) by striking the word “commercial” each place it occurs and inserting the word “those” after the phrase “serious injury from”.

(b) Section 102(a)(6) (16 U.S.C. § 1372(a)(6)), as redesignated by section 502(b) of this Act, is amended by deleting the word “commercial”.

(c) Section 104(a) (16 U.S.C. § 1374(a)) is amended by deleting the word “commercial”.

(d) Section 109(b)(3)(B)(i)(16 U.S.C. § 1379(b)(3)(B)(i)) is amended by striking the word “commercial” and replacing the term “(4)” with the phrase “or section 118”.

(e) Section 111 (16 U.S.C. § 1381) is amended-

(1) by amending the title of this section to read: “Fisheries Gear Development”;

(2) in subsection (a)(1), as set forth in section 516(a) of this Act, by striking the word “commercial”; and

(3) in subsection (e), as redesignated by section 516(c) of this Act, by striking the word “commercial” and replacing the phrase “documented under the laws of the United States” with the words “engaging in a listed fishery”.

(f) Section 115 (16 U.S.C. § 1383b) is amended by revising subsection (b)(4) to read: “If the Secretary determines that a take reduction plan is necessary to reduce the taking of marine mammals incidental to engaging in a listed fishery from a strategic stock, or for species or stocks which interact with a fishery for which the Secretary has made a determination under section 118(f)(1), any conservation plan prepared under this subsection for such species or stock shall incorporate the take reduction plan required under section 118 for such species or stock.”

(g) Section 117 (16 U.S.C. § 1386) is amended by striking the word “commercial” each place it occurs and in subsection (a)(4) replacing it with the word “listed”.

(h) Section 118 (16 U.S.C. § 1387) is amended-

(1) by amending the title of Section 118 to read: “Taking of Marine Mammals Incidental To Fishing Operations”;

(2) in subsection (a)(5) by striking the word “commercial”;

(3) in subsection (c)(1)(B) by deleting the word “commercial”;

(4) in subsection (c)(1)(C) by deleting the word “commercial”;

(5) in subsection (c)(3)(C) as redesignated by section 402(b) of this Act, by inserting the word “commercial” after the phrase “engaged in any”;

(6) in subsection (c)(5)(B) by striking the word “commercial”;

(7) in subsection (d)(1) by striking the phrase “commercial fishing operations” and replacing it with the phrase “engaging in a listed fishery”;

(8) in subsection (d)(3) by striking the word “commercial” and replacing it with the word “listed”;

(9) in subsection (d)(4) by striking the word “commercial” each place it occurs and replacing it in each instance with the word “listed”;

(10) in subsection (d)(5) by striking the phrase “commercial fishing operations” and replacing it with the phrase “engaging in a listed fishery”;

(11) in subsection (f)(2) by striking the phrase “commercial fishing operations” each place it occurs and replacing it in each instance with the phrase “engaging in a listed fishery”;

(12) in subsection (f)(3) by striking the word “commercial”;

(13) in subsection (f)(4)(B) by striking the phrase “commercial fishing operations” and replacing it with the phrase “engaging in a listed fishery”;

(14) in subsection (f)(5)(A) by striking the word “commercial” and replacing it with the word “listed”;

(15) in subsection (f)(5)(B) by striking the word “commercial” and replacing it with the word “listed”;

(16) in subsection (f)(6)(A)(ii) by striking the word “commercial” and replacing it with
the word “listed”;

(17) in subsection (f)(7)(D) by striking the word “commercial”;

(18) in the first sentence of subsection (f)(8) by striking the word “commercial”;

(19) in subsection (f)(8)(D) by striking the word “commercial”;

(20) in subsection (f)(9)(A) by striking the word “commercial” each place it occurs and replacing it in each instance with the word “listed”;

(21) in subsections (f)(9)(B) and (C) by striking the word “commercial” each place it occurs;

(22) in subsection (f)(9)(D) by striking the phrase “commercial fishing operations” and replacing it with the phrase “participation in a listed fishery”;

(23) in the first sentence of subsection (g)(1) by striking the word “commercial” and replacing it with the word “listed”;

(24) in subsection (g)(3)(B) by striking the word “commercial”; and

(25) in subsection (g)(4) by striking the word “commercial” and replacing it with the word “listed”.

(i) Section 407 (a)(3)(A) (16 U.S.C. § 1421f(a)(3)(A)) is amended by striking the word “commercial”.

SEC. 405. STRIKING OF SECTION 114.

Section 114 (16 U.S.C. § 1383a) is repealed.

SEC. 406. CONFORMING AMENDMENTS TO THE STRIKING OF SECTION 114.

(a) Section 102 (16 U.S.C. § 1372) is amended in subsection (a) by striking “114,”.

(b) Section 118 (16 U.S.C. § 1387) is amended—

(1) in subsection (a)(1) by striking “section 114 and in”; and

(2) in subsection (c) by—

(A) striking the phrase “under section 114(b)(1) and which is in existence on March 31, 1994” in paragraph (1)(A) and inserting in its place the phrase “in the *Federal Register* by the Secretary on August 25, 1994”;

(B) striking in subsection (c)(4)(A) “Previous failure to comply with the requirements of section 114 shall not bar authorization under this section for an owner who complies with the requirements of this section.”; and

(C) striking in subsection (c)(4)(A) the reference “(3)(B)” and replacing it with “(3)(A)(v)”.

SEC. 407. GULF OF MAINE HARBOR PORPOISE.

Section 120 (16 U.S.C. § 1389) is amended by striking subsection (j).

SEC. 408. CALIFORNIA SEA OTTER FISHERY INTERACTIONS.

Section 118 (16 U.S.C. § 1387) is amended by inserting the following sentence at the end of subsection (a)(4): "Notwithstanding this exclusion, the Secretary shall include information concerning

California sea otters in the list of fisheries published pursuant to subsection (c)(1) and shall include this species in determinations regarding monitoring programs pursuant to subsection (d)."

SEC. 409. ALTERNATIVE OBSERVER PROGRAM.

(a) Section 118(d)(5) (16 U.S.C. § 1387(d)(5)) is amended by inserting the following sentence at the end of that paragraph: "The Secretary is directed to explore the use of new technologies for such alternative monitoring."

TITLE V: OTHER AMENDMENTS

SEC. 501. POLAR BEAR PERMITS.

Section 104 (16 U.S.C. § 1374) is amended—

(a) by revising the first sentence of subsection (c)(5)(D) to read: "The Secretary of the Interior shall issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before the date of enactment of the Marine Mammal Protection Act Amendments of 1994 to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant.";

(b) by inserting the following at the end of the first sentence of subsection (d)(2): ", except for an application for a permit to import polar bear parts taken from a population that has been approved under subsection (c)(5) (A) of this section or to import polar bear parts taken from all populations under subsection (c)(5)(D) of this section";

(c) by inserting the following at the end of the concluding sentence of subsection (d)(5): "if a notice of application was required to be published pursuant to paragraph (2) of this subsection."; and

(d) by adding a new subparagraph (E) in subsection (c)(5) to read as follows: "(E) The Secretary shall make available to the public on a semi-annual basis information concerning the permits issued or denied under this paragraph."

SEC. 502. CAPTIVE RELEASE PROHIBITION.

Section 102(a) (16 U.S.C. § 1372(a)) is amended—

(a) by adding a new paragraph (5) to read as follows—

“(5) for any person to release any marine mammal maintained in captivity at a facility unless specifically authorized to do so under a permit issued pursuant to section 104(c) or under 109(h) of this Act. This provision shall not apply to the temporary release of any marine mammal by the Department of Defense for military or research purposes provided that the marine mammal is—

“(A) maintained in captivity under Section 7524 of Title 10, United States Code, or is the progeny of a marine mammal maintained under that provision, or

“(B) the progeny of a marine mammal excluded from coverage under this Act by section 102(e).”; and

(b) by redesignating former paragraph (5), as amended by section 404(b), as paragraph(6).

SEC. 503. PENALTIES.

(a) Section 105 (16 U.S.C. § 1375) is amended—

(1) by revising subsection (a)(1) to read as follows: “(a)(1) Any person who violates any provision of this title or of any permit or regulation issued thereunder, may be assessed a civil penalty by the Secretary of not more than \$50,000 for each such violation, provided that any person who violates section 118(c)(3)(A)(ii) of this Act shall be subject to a civil penalty of not more than \$100 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking, importation, exportation, sale, purchase, or transport and each day on which unlawful fishing is conducted in violation of section 118(c)(3)(A) shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.”; and

(2) in subsection (b) by striking the phrase “(except as provided in section 118)”, striking the term “\$20,000” and inserting in its place “\$100,000”, and inserting the following provision at the end of the subsection: “; except that if in the commission of any offense described in section 102(d)(1-5) the person uses a dangerous weapon, engages in conduct that causes bodily injury to any person authorized by the Secretary to enforce this title, or places any such person in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$200,000, or imprisonment for not more than 10 years, or both”.

(b) Section 118(h) (16 U.S.C. § 1387(h)) is amended by striking the phrase “Except as provided in subsection (c), any” and replacing it with the word “Any”.

SEC. 504. VESSEL FINES AND CARGO FORFEITURE.

Section 106 (16 U.S.C. § 1376) is amended -

(a) by adding in subsection (a) the phrase “or in fishing in violation of section 118(c)(3)(A)(i), (iii), (iv), or (v),” after “that is employed in any manner in the unlawful taking of any marine mammal”;

(b) by adding in subsection (a) the phrase “or unlawful fishing” after “in connection with the unlawful taking of a marine mammal”;

(c) by adding in subsection (b) the phrase “or in fishing in violation of section 118(c)(3)(A)(i), (iii), (iv), or (v),” after “that is employed in any manner in the unlawful taking of any marine mammal”;
and

(d) by striking in subsection (b) “\$25,000” and inserting “\$50,000”.

SEC. 505. MARINE MAMMAL COMMISSION ADMINISTRATION.

Section 206(4) (16 U.S.C. § 1406(4)) is amended by striking “(but at rates for individuals not to exceed \$100 per diem)”.

SEC. 506. ENFORCEMENT.

Section 107 (16 U.S.C. § 1377) is amended by inserting the following sentence at the end of subsection (b): “The Secretary is further directed to seek to enter into agreements pursuant to section 112(c) with state law enforcement agencies to establish, implement, and provide funding for cooperative enforcement of the provisions of this title.”.

SEC. 507. INTERFERENCE WITH INVESTIGATIONS AND AUTHORIZED ACTIVITIES.

Section 102 (16 U.S.C. § 1372) is amended by—

(a) redesignating subsection (d), (e), and (f) as (e), (f), and (g) respectively; and

(b) adding a new subsection (d) to read as follows: “(d) Interference with Investigations and Authorized Activities. – It is unlawful for any person to—

“(1) refuse to allow any person authorized by the Secretary to enforce this title to board any vessel or other conveyance, except any public vessel as that term is defined in Section 2101 of Title 46 of the United States Code, for purposes of conducting any search or inspection in connection with enforcement of this title;

“(2) assault, resist, oppose, impede, intimidate, or interfere with any person authorized by the Secretary to enforce this title, who is conducting any search or inspection in connection with enforcement of this title;

“(3) resist a lawful arrest for any act prohibited under this title;

“(4) interfere with the apprehension or arrest of any person who has committed any act prohibited by this title;

“(5) make or submit any false record, account or information relating to the provisions of this title; or

“(6) engage in physical conduct that significantly hinders lawful activities authorized by the Secretary under title IV.”.

SEC. 508. AUTHORIZATIONS FOR MARINE MAMMAL HEALTH AND STRANDING RESPONSE.

Section 409 (16 U.S.C. § 1421g) is amended to read as follows: “There are authorized to be appropriated to the Fund, \$125,000 for fiscal year 2003 and such sums as may be necessary for fiscal years 2004-07.”.

SEC. 509. STRANDING AND ENTANGLEMENT RESPONSE.

(a) Section 402(b)(1)(A) (16 U.S.C. § 1421a(b)(1)(A)) is amended by inserting the words “or entangled” after the word “stranded”.

(b) Section 403 (16 U.S.C. § 1421b) is amended by revising the title of the section to read “Stranding or Entanglement Response Agreements” and in subsection (a) by inserting at the end of the sentence “or entanglement.”.

(c) The introductory provision of section 406 (16 U.S.C. § 1421e) is amended in subsection (a) to read as follows: “(a) IN GENERAL – A person who is authorized to respond to a stranding or entanglement pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions that are—”.

SEC. 510. ENTANGLEMENT DEFINITION.

Section 410 (16 U.S.C. § 1421h) is amended by adding at the end a new subsection as follows:
“(7) The term ‘entanglement’ means an event in the wild in which a living or dead marine mammal has gear, rope, line, net, or other material wrapped around or attached to it and is–

“(A) on a beach or shore of the United States; or

“(B) in waters under the jurisdiction of the United States (including any navigable waters).”.

SEC. 511. UNUSUAL MORTALITY EVENT FUNDING.

Section 405(c)(2) (16 U.S.C. § 1421d(c)(2)) is amended by striking the phrase “for use with respect to unusual mortality events” and replacing it with the words “under this Act”.

SEC. 512. MARINE MAMMAL RESEARCH GRANTS.

Section 110 (16 U.S.C. § 1380) is amended–

(a) by amending subsection (a) to read: “Authorization; Annual Report. – The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals, and the ecosystems upon which they depend, including, but not limited to, the Bering/Chukchi Sea ecosystem, and the California coastal marine ecosystem. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 103(f).”; and

(b) by striking subsections (c) and (d).

SEC. 513. TRAVELING EXHIBITS.

Section 102 (16 U.S.C. § 1372) is amended by adding a new subsection (h) to read as follows:
“(h) Traveling Exhibits.– It is unlawful for any person subject to the jurisdiction of the United States to import, export, possess, or transport any cetacean in connection with a traveling exhibit, and no permit shall be issued for such purpose.”.

SEC. 514. DEFINITION OF TRAVELING EXHIBITS.

Section 3 (16 U.S.C. § 1362) is amended by inserting a new subsection to read as follows:
“(31) The term ‘traveling exhibit’ means any mobile or traveling housing facility or exhibit of live marine

mammals that moves such marine mammals to different locations on a routine or frequent basis for purposes of public display or public education.”.

SEC. 515. HARASSMENT DEFINITION.

Section 3 (16 U.S.C. § 1362) is amended in subsection (18) to read as follows:

"(18) The term “harassment” means any act which—

“(A) [Level A] injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

“(B) [Level B]

“(i) disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild

by c

“(ii) is directed toward a specific individual, group or stock of marine mammals in the wild that is likely to disturb the individual, group, or stock of marine mammals by disrupting behavior, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering.”.

SEC. 516. FISHERIES GEAR DEVELOPMENT.

Section 111 (16 U.S.C. § 1381) is amended by—

(a) revising subsection (a) to read as follows: “(a) Research and Development Program;

Authorization of Appropriations.—

“(1) The Secretary of Commerce is authorized and directed to undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with fishing operations. The Secretary shall undertake every practicable effort to develop, evaluate, and make available to owners and operators of fishing vessels such gear and fishing method improvements as quickly as possible.

“(2) Subject to the availability of appropriations, the Secretary may establish a voluntary fishing gear buy-back program, if such action is specifically provided for in a take reduction plan adopted pursuant to section 118(f) or in regulations promulgated pursuant to section 118(f) or (g).

“(3) The Secretary may coordinate with other nations to foster gear technology transfer initiatives to reduce to the maximum extent practicable the incidental mortality and serious injury of marine mammals throughout the full extent of their range.”;

(b) adding a new subsection (b) to read as follows: “(b) Gear Research Mini-Grant Program. — Subject to the availability of appropriations, the Secretary may establish a grant program to provide financial assistance for the development of fishing gear designed to eliminate or reduce to the maximum extent practicable the incidental taking of marine mammals.

“(1) In carrying out this program, the Secretary may make grants, each not to exceed \$20,000, for the purpose of developing, manufacturing, testing or designing new fishing gear intended to eliminate or reduce to the maximum extent practicable the incidental mortality and serious injury of marine mammals.

“(2) Of amounts available each fiscal year to carry out this subsection, the Secretary may expend not more than \$40,000 to pay the administrative expenses necessary to carry out this subsection.

“(3) To receive a grant under this section, an applicant must submit an application in such form and manner as the Secretary may prescribe.

“(4) The Secretary shall consult with the Secretary of the Interior and the Marine Mammal Commission regarding the development of criteria for the awarding of grants under the program.”; and

(c) by redesignating existing subsections (b), (c), and (d) as (c), (d), and (e) respectively.

SEC. 517. SHIP STRIKES OF WHALES.

Section 112 (16 U.S.C. § 1382) is amended by adding a new subsection (f) as follows: “(f) Ship Strikes of Whales. — The Secretary of Commerce shall use the various authorities conferred by this title to reduce the occurrence of the striking of whales by ships and shall encourage continued investigations into methods for avoiding ship strikes.”.

SEC. 518. USE OF FINES.

16 U.S.C. § 1375a is amended by --

(a) revising the heading to read “Sec. 1375a. Use of Fines.”;

(b) by placing an “(a)” before the existing text of the Section and by inserting the words “and penalties” after the word “fines” in the newly designated subsection (a); and,

(c) by adding a new subsection (b) as follows: “(b) Hereafter, all fines and penalties collected for violations of the Marine Mammal Protection Act (16 U.S.C. §§ 1362-1421h) and implementing regulations by the National Oceanic and Atmospheric Administration shall be available to the Secretary of Commerce, subject to appropriation, to pay expenses incurred by the Secretary in enforcing the Act, or in administering activities for the protection and recovery of marine mammal species under its jurisdiction, and shall remain available until expended.”

SEC. 519. CONFORMING AMENDMENTS TO THE TABLE OF CONTENTS.

The table of contents in the first section of the Act is amended by—

(a) revising “Sec. 111. Commercial fisheries gear development.” to read “Sec. 111. Fisheries gear development.”;

(b) striking “Sec. 114. Interim exemption for commercial fisheries.” and reserving this section;

(c) revising “Sec. 118. Taking of marine mammals incidental to commercial fishing operations.” to read “Sec. 118. Taking of marine mammals incidental to fishing operations.”;

(d) adding new item “Sec. 119A. Marine mammal co-management agreements in Alaska.”; and

(e) revising “Sec. 403 Stranding response agreements.” to read “Stranding or entanglement response agreements.”.

SEC. 520. TECHNICAL CORRECTIONS.

(a) Section 3(22)(A) (16 U.S.C. § 1362(22)(A)) is amended by deleting the word “referred” and inserting in its place the word “refereed”.

(b) Section 107(e)(4)(B)(16 U.S.C. § 1377(e)(4)(B)) is amended by deleting the word “with” and inserting in its place the word “within”.

(c) Section 109(d)(1) (16 U.S.C. § 1379(d)(1)) is amended by deleting the term “3(14)(B)” and inserting in its place the term “3(15)(B)”.

(d) Section 112(d) (16 U.S. C. § 1382(d)) is amended in the second sentence by deleting the phrase “purposes of policies” and inserting in its place the phrase “purposes and policies”.